

The Gazette of India

EXTRAORDINARY

PART I—Section 1

PUBLISHED BY AUTHORITY

No. 345] NEW DELHI, MONDAY, AUGUST 11, 1952

ELECTION COMMISSION, INDIA

NOTIFICATION

New Delhi, the 11th August 1952

No. 19/19/52-Elec.III.—Whereas the election of Shri Mithabhai Ramji Chauhan of Fatehpura, Koyali Falia, Baroda, Bombay State as a member of the Bombay Legislative Assembly from the Baroda-cum-Vaghodia constituency of that Assembly has been called in question by an election petition duly presented under Part VI of the Representation of the People Act, 1951 (Act XLIII of 1951), by Shri Nagjibhai Govindbhai Arya of Kareli Bag, Baroda, Bombay State;

And whereas, the tribunal appointed by the Election Commission, in pursuance of the provisions of section 86 of the said Act for the trial of the said petition, has in pursuance of the provisions contained in section 103 of the said Act, sent a copy of its order to the Commission;

Now, therefore, in pursuance of the provisions of section 106 of the said Act the Election Commission hereby publishes the said Order of the Tribunal.

ELECTION PETITION No. 19 OF 1952.

CORAM

Shri M. S. Noronha, B.A., LL.B., J.P.—*Chairman.*

Shri N. M. Miabhoy, B.A., LL.B.

Shri A. A. Adarkar, B.A., LL.B.

} Members
of the Election
Tribunal.

In the matter of the Representation of the People Act, 1951
and

In the matter of the Representation of the People (Conduct of Elections and Election Petitions) Rules, 1951

and

In the matter of the Election Petition presented thereunder by Shri Nagjibhai Govindbhai Arya.

Nagjibhai Govindbhai Arya, Age 44, Occupation Social Service,
Caste Vankar, residing at Kareli Bag, Baroda. Petitioner.

Versus

1. Mithabhai Ramji Chawhan, age 55. Caste Vankar, residing at Fatehpura, Koyali Falia, Baroda.

(1893)

2. Nathabhai Mavjibhai Parmar, age 34, Caste Vankar, residing at Nagarwada, Laljikui, Baroda.
3. Haribhai Rama Parmar, age 33, Caste Vankar, residing at Navapura, Dhedwada, Baroda.
4. Laxmiprasad Mithadas Mahant, age 36, Caste Sadhu, residing at Navapura, Taiwada, Baroda.....Respondents.

JUDGEMENT

This is a petition under Section 81 of the Representation of the People Act, 1951 (Act XLIII of 1951), hereinafter referred to as the Act, filed by the Petitioner abovenamed calling in question the election of Respondent No. 1 abovenamed from the Baroda-cum-Vaghodia Constituency to a seat reserved for the Scheduled Castes in the Bombay Legislative Assembly. The Petitioner, it appears, delivered to the Returning Officer of the said constituency four nomination papers on the 22nd of November, 1951, in each of which he had made as required by Section 33 of the Act a declaration duly verified before a Magistrate to the effect that he was a member of the Vankar caste, which, admittedly, is a Scheduled Caste in the State of Bombay. The scrutiny of these nominations took place on the 27th of November 1951 when the 2nd Respondent abovenamed raised objections to the nomination of the petitioner, contending that the Petitioner was not qualified to be a member of the Scheduled Castes as required by Section 5 of the Act. It was contended by the said 2nd Respondent that though the Petitioner had stated his caste to be 'Vankar' in the nomination papers, he was in fact an Arya Samajist and had stated in public declarations that his caste was "Arya", and that therefore he did not belong to any Scheduled Caste.

2. The Returning Officer Shri C. V. Shah thereupon held an enquiry into the matter under Section 36 of the Act, in the course of which affidavits were put in, oral testimony was recorded and arguments of both sides were heard. As the result of the enquiry the said Returning Officer held that the Petitioner was not a member of the Scheduled Castes but a member of the Arya Samaj and that as such he could not stand as a candidate for a seat reserved for the Scheduled Castes. He therefore rejected the Petitioner's nomination papers. The Petitioner has in his Petition contended on various grounds based on facts and on law that the rejection of his nomination was improper and wrongful and that the result of the election has been materially affected by such improper rejection. In the circumstances the Petitioner has prayed that the election of the 1st Respondent from the Baroda-cum-Vaghodia Constituency to the seat reserved for the Scheduled Castes in the Bombay Legislative Assembly be declared to be void; that the Petitioner's costs of the Petition and its trial be ordered to be paid by the Respondent; and that the Petitioner may be granted such other or further relief as may be deemed fit by the Tribunal.

3. Before referring to the written statements of the Respondents abovenamed, with a view to understand the Respondent's contentions better, certain facts admitted on both sides have got to be set out. It is common ground that the Baroda-cum-Vaghodia constituency was a plural member constituency, entitled to elect candidates for two seats in the Bombay Legislative Assembly, one of which was reserved for a member belonging to the Scheduled Castes; that there were 9 duly nominated candidates in all, including the four Respondents on record; that the four Respondents on record stood for election as members of the Scheduled Castes; that after his nomination has been accepted Respondent No. 4 abovenamed withdrew his candidature under Section 37 of the Act before the date fixed for such withdrawal under Section 30 of the Act; that the five duly nominated candidates who are not on the record in this Petition are: (1) Patel Banganbhai Shankarbhai, (2) Manohar Kamalakar Dinkar, (3) Patel Muljibhai Desai, (4) Patel Rambhai Kesurbhai and (5) Solanki Chhatrasingh Bapusingh, all of whom were candidates for the general seat; and that the results of the election as published under Section 67 of the Act in the Bombay Government Gazette of 31st January, 1952 showed that the two successful candidates in the election were Patel Maganbhai Shankarbhai (General seat) and Respondent No. 1 abovenamed (Reserved seat). In the present Petition the Petitioner has brought on record as Respondents only the four candidates who stood for election as members of the Scheduled Castes, and has not impleaded as Co-Respondents the five candidates who stood for election to the general seat.

4. At the trial of the Petition Shri P. B. Patwari and Shri C. C. Mehta, advocates, appeared for the Petitioner. Shri B. M. Majumdar, advocate, for Respondent No. 1 and Shri K. B. Bhawe for Respondent No. 4. The Respondents Nos. 2 and 3 appeared in person. Mr. Majumdar put in a written statement on behalf of Respondent No. 1 which has been marked as Exhibit No. 1. The written statement of Respondent

No. 2 has been put in and marked as Exhibit No. 2. The written statement of Respondent No. 4, which is in Gujarati, has been marked as Exhibit No. 3. Respondent No. 3 stated that he did not desire to file a written statement or to oppose the Petition. In the written statements put in, various grounds based on facts and on law have been put forward to show that the petitioner had at all times described himself as an Arya; that the Arya Samajists belong to no caste; that a member of the Scheduled Castes on becoming an Arya Samajist ceases to belong to the Scheduled Castes; and that in the circumstances the order of the Returning Officer rejecting the nomination of the Petitioner as a member of the Scheduled Castes was just, legal and proper.

5. In the written statement of the 1st Respondent, however, two very important preliminary objections have been raised: (1) That in view of the provisions of Section 82 of the Act which makes it mandatory for a Petitioner "To join as Respondents to his Petition all the candidates who were duly nominated at the election other than himself", the present Petition in which only four of the nine duly nominated candidates have been made Respondents is untenable in law and must be dismissed, and (2) that in the light of the provisions of Section 100 Clause (1) Sub-clause (c), the only prayer permissible to the Petitioner is one for a declaration that the entire election is wholly void, while the petitioner has actually prayed for a partial declaration in respect of Respondent No. 1 only, and therefore the Petition is not maintainable and must be dismissed. These preliminary objections were adopted by all the other contending Respondents, and they were treated as preliminary issues to be disposed of before trial of the Petition on merits. Respondent No. 2 had also contended that the Tribunal had no jurisdiction to try to the Petition, and that the Petitioner having failed to embody material facts in his Petition as required by Section 83 of the Act, the Petition should be summarily dismissed under clause (4) of Section 90 of the Act. These objections were, however, abandoned by him at the commencement of the trial.

6. The trial therefore proceeded on the preliminary objections raised by Respondent No. 1 and adopted by the other Respondents. It was argued by Mr. Majumdar, advocate for Respondent No. 1, that the provisions of section 82 are mandatory and that the Petitioner was bound to join as Respondents all the 9 duly nominated candidates at the election. In Section 79(b) 'Candidate' has been defined as a person who has been or claims to have been duly nominated as a candidate at any election, and any such person shall be deemed to have been a candidate as from the time when, with the election in prospect, he began to hold himself out as a prospective candidate. All the nine candidates in this case were 'duly nominated candidates' as their nominations had been accepted by the Returning Officer. Mr. Majumdar further argued that the words "The Election" in Section 82 meant the whole election and not any Part of it such as, for example, the election relating only to the Scheduled Castes candidate. Mr. Majumdar has cited the decision in Rathischandra Munshi V/s Amulyacharan Ghatak (I.L.R. 58, Calcutta, P. 87). In this case, which related to an election under the Bengal Municipal Act, it was held by a Division Bench of the Calcutta High Court that in a joint election where the nomination of one of the candidates was improperly accepted the whole election should be set aside. Referring to the prayer of the Petitioner asking for a declaration that only the election of Respondent No. 1 should be declared to be void, Mr. Majumdar contended that such a prayer was not permissible to the Petitioner. Under Section 100 Clause (1) sub-clause (c), if the Petitioner maintains that his nomination has been improperly rejected and that it has materially affected the election, the only prayer permissible to him is one for a declaration that the whole election is void. Such a prayer according to Mr. Majumdar could not be granted without making all the other duly nominated candidates party Respondents in this Petition. In the absence of the only permissible and proper prayer, Mr. Majumdar submitted, the Petition should fail.

7. Mr. Patwari on behalf of the Petitioner at the outset referred to Section 2 Clause (d) which defines "election" to mean an election fill a seat or seats in either House of Parliament or in the House or either House of the Legislature of a State. His inference therefore was that the words "At the election" in Section 82 do not necessarily mean the whole election. According to him those words might refer to the election to fill one or more of several seats or all the seats in an election. He argued that in this particular case a seat having been reserved for the Scheduled Castes, a Petition relating to the election to that seat only and bringing on record as Respondents only the candidates belonging to the Scheduled Castes would be perfectly in order. The case of Line and Others V/s Warren and Others (14, Queen's Bench Division, P. 548) relied upon by Mr. Patwari is not relevant to the present Petition. In that case certain candidates in a municipal election whose

nomination had been rejected improperly by the Mayor preferred an election petition against some only of the successful candidates. It was held that the petition was in order and maintainable. This was because the English Municipal Corporations Act, 1882, specifically contemplates and permits in such circumstances a petition to set aside the election of only some or of all the successful candidates. Such a provision does not exist in the Representation of the People Act.

8. The Tribunal has carefully gone into the contentions of the two sides. The Tribunal has no doubt that the words "At the election" employed in section 82 of the Act can only mean the whole election and do not mean the election in so far as it relates to any one of several seats for which candidates stood at one and the same election. The provisions of Section 82 are mandatory. This section requires the Petitioner to join all the duly nominated Candidates as Parties to the Petition. It does not make any exception even in the case of those candidates who withdrew their candidature after scrutiny. In a plural member constituency, other than a Council constituency where one of the seats is reserved for a member of the Scheduled Castes or the Scheduled Tribes, the election for both the seats takes place at the same time. Besides, every elector whether belonging to the Scheduled Castes and Tribes or not has got as many votes as there are members to be elected. But no voter can give more than one vote to any one candidate (See Section 63 of the Act). Not only that, but also it is open to any elector to give all his votes to the candidates from the Scheduled Castes and Tribes or all to the candidates for the non-reserved seat. As provided by Section 55 of the Act a member of the Scheduled Castes or of the Scheduled Tribes is not disqualified to hold a seat not reserved for members of those castes or tribes. Apparently the ballot papers issued to the electors for the election of the candidates to the general seat and the reserved seat are identical in every respect. Section 54 provides that in a plural member constituency where a seat is reserved for the Scheduled Castes or the Scheduled Tribes, if the members of the Scheduled Castes or the Scheduled Tribes top the polls they are entitled to carry away both the general and the reserved seats. On the other hand if candidates not belonging to the Scheduled Castes or Scheduled Tribes top the polls, only the top man will be declared elected to the general seat while the other seat will go to the candidate from the Scheduled Castes or the Scheduled Tribes who secures the highest number of votes among candidates of that class. In the circumstances it is quite clear to the Tribunal that the election in this particular case was one, entire and indivisible; that the provisions of Section 82 being mandatory, the petitioner is bound to bring in record as Respondents all the duly nominated candidates; and that the Petitioner having failed so to bring all the duly nominated candidates on record as Respondents this Petition is untenable as framed and must fail.

9. Turning now to the prayer of the Petitioner which is that the election of Respondent No. 1 alone may be declared to be void, the same appears to be not warranted by the provisions of Section 100 clause (1) sub-clause (c), which provides that if the Tribunal is of the opinion that the result has been materially affected by the improper acceptance or rejection of any nomination the Tribunal shall declare the election to be wholly void. Improper rejection of a nomination paper is a material irregularity affecting the result of the election and is sufficient to avoid it, inasmuch as the entire electorate is deprived of its right to vote for a candidate who was qualified to receive their vote (See *Bansantsing V/s Ratan-sing*, Vol. I, *Doabia's Indian Election Cases*, P.80). The moment a Returning Officer improperly and without justification refuses to receive a nomination paper sought to be presented to him within the time prescribed, the presumption arises that the result of the election has been materially affected. The improper refusal of a nomination paper by the Returning Officer is a grave irregularity and this presumption would require the strongest and most conclusive proof for its rebuttal, and it lies heavily on the Respondent to rebut the presumption so raised (See *S. R. Lewis V/s C. R. Gibbon*, Vol. I, *Doabia's Indian Election Cases*, P. 259). If therefore the whole election is to be set aside it also follows as a corollary that all the duly nominated candidates, particularly, the successful candidate for the general seat, must be made Respondents in this Petition. In the circumstances the Tribunal is of the opinion that the prayer of the Petitioner in this Petition is entirely misconceived and cannot stand.

10. On a consideration of the two preliminary points raised by the Respondents, the Tribunal has reached the conclusion that under the circumstances of this case the Petitioner should have joined all the duly nominated candidates as parties to this petition, and that the partial relief that he has asked for, for a declaration that the election of the Respondent No. 1 alone should be held to be void, cannot stand. Even if it is assumed in favour of the Petitioner that the

provisions of Section 82 of the Act are not mandatory, although *prima facie* they appear to be so. the Tribunal has no doubt whatsoever that having regard to the circumstances of the present case the non-joinder of the non-scheduled castes candidates is fatal for the following reasons Section 100 (1) clearly states, that when the Tribunal forms the opinion that the result of an election has been materially affected by the improper rejection of any nomination then the election shall be wholly void. In the opinion of the Tribunal this clearly means that in the circumstances mentioned in Section 100, clause (1) the Tribunal is not left with any choice except to declare the whole of the election to be void. It is not open to the Tribunal in that set of circumstances to hold an election partially void. Therefore the Tribunal has reached the conclusion that in a plural member constituency where there is a reserved seat for a member of the Scheduled Castes and where a nomination paper has been improperly rejected, it is absolutely essential that all persons, including the members of the non-scheduled castes, who were duly nominated candidates should be joined because if they are not so joined then the Tribunal cannot grant the only relief which it is permissible to grant under the circumstances, that relief being that the election should be declared to be wholly void. It is quite clear that this relief cannot be granted by the Tribunal in the absence of the other duly nominated candidates.

11. During the course of the hearing the Tribunal had put a specific question to Shri Patwari, the learned advocate for the petitioner, whether in the event of the decision on the preliminary objections going against the Petitioner he would apply for an amendment of the Petition so as to bring all the duly nominated candidates on record as party Respondents in this Petition. Shri Patwari had categorically stated then that the Petitioner had no intention of doing so. This is now confirmed by Shri C. C. Mehta, Advocate for the Petitioner, after the judgement of the Tribunal upto paragraph 10 was read. In the circumstances the Tribunal orders that this Petition be dismissed.

12. On the question of costs, after hearing the Petitioner and the Respondents and their advocates, the Tribunal makes the following order: The petitioner should pay to Respondent No 1 Rs 100 as costs of and incidental to this Petition and Rs. 30 to Respondent No. 2. As respondent No. 3 did not oppose the Petition and as Respondent No. 4 was a dummy candidate for Respondent No 3 and had withdrawn his candidature before the election this Tribunal does not award any costs to either of them

(Sd.) M. S. NORONHA.

(Sd.) N. M. MIABHOY

(Sd.) A. A. ADARAR.

BARODA;

21st July, 1952.

P. S. SUBRAMANIAN,
Officer on Special Duty.

